

Approved April 25, 1990

Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Wint Winter, Jr. at  
Chairperson

10:00 a.m./~~p.m.~~ on February 27, 1990 in room 514-S of the Capitol.

All members were present except: Senator Gaines who was excused.

Committee staff present:

Mike Heim, Legislative Research Department  
Jerry Donaldson, Legislative Research Department  
Gordon Self, Office of Revisor of Statutes  
Judy Crapser, Secretary to the Committee

Conferees appearing before the committee:

Edwin Van Petten, Deputy Attorney General  
Jerry Wells, Assistant Douglas County District Attorney  
James Clark, Kansas County and District Attorneys Association  
Thomas Johnson, Assistant Appellate Defender  
Susan Stanley, Assistant Attorney General  
Helen Sommer, Eudora  
Jay Grosdidier, Eudora  
Billie Bichelmeyer, Eudora

The Chairman opened the meeting by opening the hearing for SB 468.

SB 468 - concerning crimes, punishment and criminal procedure; relating to authorized dispositions.

Senator Moran, co-sponsor of SB 468, presented the bill by stating that it "puts the keys to the prison door back in the hands of the judge."

Edwin Van Petten, Deputy Attorney General, testified on behalf of Attorney General Robert Stephan in support of SB 468. (ATTACHMENT I)

Chairman Winter, co-sponsor of SB 468, stated that as a result of the 1989 SB 49, several judges have interpreted that they MUST release the defendants unless it can be proven that the release is not in the best interests of that defendant. He added that SB 468 restated the safety of public not be put in jeopardy; the burden is placed on the defendant to prove that point to the court.

Jerry Wells, Assistant Douglas County District Attorney, testified in support of SB 468. He restated the testimony presented by Mr. Van Petten.

James Clark, Kansas County and District Attorneys Association, testified in support of SB 468. He stated that his association was not trying to bypass the parole hearing process, but supported the protection of the public safety.

Thomas Johnson, Assistant Appellate Defender, testified in opposition to SB 468. (ATTACHMENT II)

This concluded the hearing for SB 468.

The Chairman opened the hearing for SB 712.

SB 712 - concerning the Kansas code of criminal procedure; relating to disposition of defendant pending appeal by prosecution.

Jerry Wells, Assistant Douglas County District Attorney, testified in support of SB 712. He stated that the release of class A felons during an interlocutory appeal is not in the best public interest.

As no other conferees appeared, this concluded the hearing for SB 712.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,  
room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on February 27, 1990.

The Chairman opened the hearing for SB 714.

SB 714 - concerning crimes involving child victims; child testimony.

Susan Stanley, Assistant Attorney General, testified on behalf of Attorney General Robert Stephan in support of SB 714. (ATTACHMENT III)

As no other conferees appeared, this concluded the hearing for SB 714.

The Chairman opened the hearing for SB 628.

SB 628 -concerning crimes and punishment; relating to desecrating a cemetery.

Jerry Wells, Assistant Douglas County District Attorney, testified in support of SB 628. He related an actual incident in Eudora where cemetery desecration occurred with damage in excess of \$15,000. He stated that the only crime that Douglas County could charge the three violators with was cemetery desecration, a class A misdemeanor, because of current law that would not allow a higher charge.

Helen Sommer, Eudora, testified as a member of the Holy Family Catholic Church in support of SB 628. She stated that Kansas needs a law with "teeth to do something" in situations as related by Mr. Wells.

Jay Grosdidier, Eudora, testified in support of SB 628. He related the experiences of the Holy Family Catholic Church Cemetery in dealing with the results of the incident described. He stated that the repairs for just one of the headstones damaged in the incident cost the congregation \$4,500. Because of the difficulties involved in trying to determine ownership of a stone dated 1867, no stronger charges could be brought against the violators. He added that stiff penalties should be imposed against perpetrators of crimes such as those experienced by his church's cemetery.

Marge Gronniger, Eudora, testified in support of SB 628 by restating the testimony previously presented.

Billie Bichelmeyer, Eudora, stood to support SB 628 and presented a letter addressed to Chairman Winter from Barbara Seiwald. (ATTACHMENT IV)

This concluded the hearing for SB 628.

Senator Bond moved to recommend SB 628 favorable for passage. Senator Parrish seconded the motion. The motion carried.

Senator Yost moved to recommend SB 714 favorable for passage. Senator Parrish seconded the motion. The motion carried.

Senator Moran moved to recommend SB 712 favorable for passage. Senator Rock seconded the motion. The motion carried.

Since the committee meeting time had exhausted, action on SB 428 was held for a future meeting.

The meeting was adjourned.

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: FEBRUARY 21, 1990

10:00 a.m.

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
<del>De</del> Derek Walta	R.R. 3 Box 6 Caldwell, KS	
Michael Adams	PO Box 7 Caldwell, KS	
Dennis Schmidt	<del>219</del> 219 S. Osage, Caldwell, KS	
JAY GROSSDIER	Box 8 EUDORA, KS	
HeLEN SOMNER	939 Pine St Eudora, KS	
Bertille Pichetmeyer	939 Pine Eudora, KS	
Marjorie A. GRONNIGER	1402 MAIN, Eudora, KS.	
Thomas A. Johnson	1031 S. Kannon Ave.	Appellate Defender office
Doug Bowman	Topeka	Children & Youth Advisory
Ethel Nurge	5167 W 75 <sup>th</sup> ST PUKS	retired KUMC
Judith Johnson	5730 Beverly Lane <sup>mission</sup> KS	retired
Paul Shulby	Topeka	OJA
Sue Bond	Overland Park	
JERRY Wells	L.E.C. Lawrence	District Attorney
Matt Truell	Topeka	AP
Julienne Mascha	Topeka	AG
Ed Van Petten	Topeka	A.G.
S. Stanley	"	"
KEITH R LANDIS	"	CHRISTIAN SCIENCE COMMITTEE on Publications For Kansas
Ann Hoyt	Lawrence	Lawrence Journal-World
Ron Smith	Topeka	KS Bar Assoc
Jim Clow	Topeka	KC DAA
RG Frey	TOPEKA	KTLA

February 27, 1990  
10:00 a.m.



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN  
ATTORNEY GENERAL

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TESTIMONY OF  
DEPUTY ATTORNEY GENERAL EDWIN A. VAN PETTEN  
ON BEHALF OF ATTORNEY GENERAL ROBERT T. STEPHAN  
BEFORE THE SENATE JUDICIARY  
FEBRUARY 27, 1990  
RE: SENATE BILL 468

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

The Attorney General urges your support for Senate Bill 468 in correcting an error of last session. The language adopted last year gave courts little choice but to modify sentences and grant probation if that was the recommendation from the State Reception and Diagnostic Center. This has created injustice to the victims thrown into our Criminal Justice system, who simply do not understand how probation can be given to someone who has victimized them and been convicted in our courts.

I recently convicted a man of Aggravated Vehicular Homicide who was set free after three months incarceration. He received a favorable evaluation from S.R.D.C., and as such, the court had no choice but to grant probation at the modification hearing. This was not sufficient punishment, nor was this fair to the family of the victim, but the court

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really had no choice, as there was no evidence to support the findings necessary to deny the motion for probation.

Senate Bill 468 places a burden upon the defendant to prove that the public welfare will not be jeopardized. This will protect the victims' rights and the interests of the innocent public.

We urge your favorable consideration of Senate Bill 468.

From: Thomas H. Johnson  
Assistant Appellate Defender  
Appellate Defender Office  
RE: SB 468

Summary of Testimony in Opposition

On behalf of the Public Defender System, I wish to express opposition to the changes in subsection (3)(a) and (4) of this bill to the language adopted and passed as law last spring in K.S.A. 21-4603(3)(a) and (4). Specifically, we oppose amending the language in K.S.A. 21-4603(3)(a) and (4), which requires the trial court to modify an inmate's sentence when recommended by S.R.D.C. unless it makes two findings, namely that (1) the public safety will not be jeopardized, and (2) the inmate will not benefit from modification, to require the court to modify unless it is "satisfied that the best interests of the public will not be jeopardized." I offer the following rationale in support of the Public Defenders' opposition to the bill:

1. Kansas penal philosophy focuses on rehabilitation. Individual offenders are to be dealt with in accordance with their individual needs. The language of K.S.A. 21-4603(3)(a) and (4), as written, is consistent with a penal philosophy of rehabilitation because it mandates that the trial court modify an inmate's sentence unless it finds that the modification will not benefit the inmate's welfare. The proposed language of this bill no longer requires the trial court to consider the inmate's welfare; instead, the court merely must consider the "best interests of society."

2. The language of 21-4603(3)(a) and (4) is specific and requires the trial court to find that the public safety will be jeopardized and the inmate will not benefit from modification before it can ignore an S.R.D.C. recommendation in favor of modification. The proposed language of this bill is vague and general. The court is merely required to find that the "best interest of the public will not be jeopardized. What the best interest of the public is, the bill does not define. The language of this bill dilutes the direct language of K.S.A. 21-4603(3)(a) and (4), and attenuates the appellate courts' ability to enforce the legislative mandate that modification will be granted when recommended by S.R.D.C.

3. Finally, the language this bill proposes to amend in K.S.A. 21-4603(3)(a) and (4) was amended as recently as last Spring. The rationale for the 1989 amendments was a D.O.C. study indicating that trial courts modified less than 50% of the time when recommended by S.R.D.C., and a federal court order requiring the state to reduce its prison populations. There is no new information which indicates that the underlying rationale of K.S.A. 21-4603(3)(a) and (4) has changed.

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*2-27-90 d.m.*  
*Attachment II page 1 of 1*



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TESTIMONY OF  
ASSISTANT ATTORNEY GENERAL SUSAN G. STANLEY  
ON BEHALF OF ATTORNEY GENERAL ROBERT T. STEPHAN  
BEFORE THE SENATE JUDICIARY  
FEBRUARY 27, 1990  
RE: SENATE BILL 714

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

Thank you for the opportunity to address you in support of Senate Bill 714. My name is Susan Stanley, Assistant Attorney General, and I am here on behalf of Attorney General Stephan.

I ask you to support this bill not so much for the prosecutors and judges of this State but for the child victims of sexual abuse who are placed in the most unbelievable and horrifying situations.

As I am sure you are aware, prosecutors love to tell war stories and in this instance I believe this particular story will be illustrative of the reason we need to strengthen K.S.A. 22-3434.

During the past year I prosecuted a case involving an eight year old girl in Labette County. Her stepfather was being tried for indecent liberties with a child. While waiting for her turn to testify, the social worker gave her

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crayons and paper and a child's magic sketch pad to play with. When her time came to testify, she wanted to take them to the stand with her. She was a wonderful witness until we asked about the incidents of abuse that led to the charges being filed. Then she froze - she couldn't talk. She covered her face with the sketch board or bowed her head and stared at her hands laying in her lap. I attempted to question her for a while, then she looked up at me, pointed towards the twelve adults in the jury box, and wanted to know if they were all of the defendant's brothers and sisters and why they were there. This is an instance where the trauma to that child could have been avoided.

The way our procedure presently works, we ask children who are violated in the most private way, by people they are raised to trust, to take a seat in front of a roomful of strangers and tell them about unspeakable acts they have been subjected to. These children are often threatened with physical harm if they "tell" and if the harm isn't directed at the child it is directed at friends, family or pets.

Senate Bill 714 would protect child victims while they testify, allowing them to testify out of the sight of the defendant. Presently we have K.S.A. 22-3434 on the books. It allows children to testify via closed circuit television and logistically it works. It involves setting up closed circuit television sets, an extension cable and two remote speakers.



After a somewhat similar statute was found unconstitutional by the United States Supreme Court in Coy v. Iowa, our State Supreme Court reexamined our statute and found that a finding should be made by the trial court that the child requires the protection of the statute. What Senate Bill 714 does is specifically spell out the duties and requirements that the Kansas Supreme Court has dictated to our trial courts in order to protect this procedure from claims of unconstitutionality. This amendment will make K.S.A. 22-3434 easier to use and clearer to apply. That in turn will protect many child victims across the state.

February 26, 1990

Senator Wint Winter, Jr.  
State Capitol, Room 120-S  
Topeka, Kansas 66612-1594

Dear Senator Winter:

I regret not being able to attend the Senate Judiciary Committee regarding SB-628. I feel this change is long overdue and appreciate the support and help of you and Rep. David Miller.

We now face the problem of not being able to recover enough funds to make repairs, even at a minimum, as the vandals have made no restitution and so many times the families of the deceased have moved from the vicinity, or there are no relatives left.

The Church insurance does not cover the stones as they are owned by the families and Homeowner's does not normally cover unless specifically requested.

People need to be made aware of the seriousness of the crime and that such acts will not be tolerated.

Thank you for your concern and time.

Sincerely:

*Barbara A. Seiwald*

Barbara A. Seiwald

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